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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

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SUPREME COURT,

No. 908

RAILWAY EXPRESS AGENCY, INC.,
Petitioner,

v.

RAILROAD RETIREMENT BOARD, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, THE ORDER OF RAILROAD TELEGRAPHERS, AND RAILWAY LABOR EXECUTIVES ASSOCIATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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SUPREME COURT OF THE UNITED STATES

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No.

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RAILROAD RETIREMENT BOARD, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, THE ORDER OF RAILROAD TELEGRAPHERS, AND RAILWAY LABOR EXECUTIVES ASSOCIATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit, entered in the above-entitled case on January 9, 1958.

Opinions Below

The opinion of the Court of Appeals is set forth in Appendix A to this petition and is reported at 250 F. 2d 832. The order of the Railroad Retirement Board, B. O. 56-235, may be found at pp. 839-840 of the Appendix to Petitioner's

brief in the court below. That order adopts as the Board's own the examiner's findings of fact, conclusions of law and reasons therefor. The examiner's report so adopted by the Board may be found at pp. 582-804 of the Appendix to Petitioner's brief.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). The judgment of the Court of Appeals, set forth in Appendix B to this petition, was entered on January 9, 1958.

Questions Presented

1. Are the so-called merchant agents, and their employees who contract with petitioner to operate railway express agencies in a large number of small communities as an adjunct of their regular business or occupation, "employees" of petitioner for purposes of the Railroad Retirement Act and the Railroad Unemployment Insurance Act?

2. Did the Congress in defining "employee" mean to adopt common law principles, which exclude merchant agents as independent contractors, or to provide a distinct statutory test for determining the coverage of the Acts?

3. Should the Court of Appeals have remanded the case to the Railroad Retirement Board for reconsideration on the basis of the legal principles determined by that Court rather than accepting as supported by substantial evidence a decision based upon different and erroneous legal principles?

Statutes Involved

Railroad Retirement Act of 1937, 50 Stat. 308, as amended, 45 U.S.C. 228a:

> (b) The term "employee" means (1) any individual in the service of one or more employers for compensation . . .

(c) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service. . . .

Railroad Unemployment Insurance Act, 52 Stat. 1094, as amended, 45 U.S.C. 351:

(d) The term "employee" (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation . . .

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service. . . .

Statement of the Case

This proceeding was brought to review a ruling of the Railroad Retirement Board. The Board held that so-called "merchant agents" and their employees engaged in handling express business for petitioner in a number of relatively small communities are "employees" of petitioner as that term is defined in the Railroad Retirement Act of 1937 and the Railroad Unemployment Insurance Act. The Board, therefore, denied petitioner's claim for a refund of more than $108,000, plus interest, in contributions made by petitioner to the railroad unemployment insurance fund which were based on the earnings of the merchant agents from their express business.

Petitioner operates a nation-wide express business. While land, air and water transportation are utilized in providing this service, petitioner primarily utilizes rail transportation pursuant to a Standard Express Operations

Agreement entered into with the railroads. This business is handled at the local level through more than 22,000 express offices or "agencies." Many of these agencies are operated by full-time employees of petitioner on property owned or leased by petitioner. In most localities, however, the available business is not sufficient to justify the maintenance of an operation of this nature. Petitioner has arranged with the railroads, pursuant to the Standard Express Operations Agreement, to have railroad employees operate express agencies on railroad property during their regular working hours in many of these communities. Some 16,000 of petitioner's agencies are operated by railroad employees, called "joint agents," under this arrangement. Where for some reason a joint agent cannot be or is not obtained to operate express agencies in these smaller communities, petitioner often has contracted with local merchants or others to perform that function. These agents are designated as "merchant agents."

Petitioner concededly is an "employer" as that term is defined in the Railroad Retirement Act of 1937, 45 U.S.C. 228a-y, the Railroad Unemployment Insurance Act, 45 U.S.C. 351-367, and the Railroad Retirement Tax Act, 26 U.S.C. 3201-3233. All three statutes define "employer," and also "employee," in substantially the same manner. They provide retirement and unemployment benefits, administered by the Railroad Retirement Board, to retired or unemployed "employees" of the employers. As an employer, petitioner is required by the Railroad Unemployment Insurance Act to pay contributions, based upon the compensation paid to its employees, to an unemployment insurance fund. Similarly, petitioner is required by the Railroad Retirement Tax Act to pay an excise tax measured by the compensation paid to its employees. Petitioner is not required, however, to pay unemployment contributions

or retirement taxes with respect to non-employees with whom it has relationships, such as independent contractors.

The persons engaged full time in operating local express agencies on property owned or leased by petitioner have always been regarded by petitioner as employees. The joint agents and merchant agents, however, have been considered to be independent contractors. In 1938, the Board, adopting the report of its examiner (P. A. 45-97)[1], ruled that the joint agents and merchant agents are employees of petitioner for purposes of the Railroad Retirement Acts (P. A. 97-99). After a hearing and a second report by the examiner (P. A. 161-199), the Board adhered to its ruling that the merchant agents are petitioner's employees with the exception that no ruling was made in "cases in which a company or other entity not an individual is designated as agent" of petitioner (P.A. 200-223).

Thereafter, petitioner has paid, under protest, unemployment insurance contributions and retirement taxes based on the earnings of the joint agents and the merchant agents from express business. On November 20, 1943, petitioner filed with the Board a claim for refund (R.A. 82-88) of the unemployment insurance contributions paid with respect to the joint agents and merchant agents, and also with respect to another minor category of agents called branch or limited agents and a miscellaneous group lumped into the category "all others." This claim for refund was supplemented from time to time to include contributions paid in subsequent years. Petitioner also filed suit in the District Court for the Southern District of New York against a Collector of Internal Revenue for refund of the retirement taxes paid with respect to such agents. That suit, and sub-

[1] The symbol "P.A." refers to the appendix to petitioner's brief in the Court below. The appendix to respondent's brief will be referred to by the symbol "R.A."

sequent actions covering later periods, are now awaiting trial.[2]

The Board, on June 23, 1948, reopened the earlier proceeding and set for hearing the issues raised in the claim for refund. At the opening of this hearing, petitioner waived its claim for refund with respect to the joint agents in consonance with an offer in compromise that petitioner had made in the New York cases (P. A. 230). The waiver and concession that the joint agents are employees was limited to this proceeding only. Subsequently, petitioner also waived the claim for refund with respect to the miscellaneous group of agents coming within the "all others" category because the amount involved was not sufficient to justify the expense and effort that would be required to prove the claim (P. A. 446). The examiner, in an extremely long report, recommended that the Board find that the limited or branch agents are not "employees" of petitioner, but that the merchant agents and their employees are petitioner's "employees" within the coverage of the Acts (P. A. 582-804). The Board adopted the examiner's report for its findings of fact, conclusions of law, and opinion in the proceeding (P. A. 839-840).

The examiner's findings of fact concerning the relationship of petitioner and its merchant agents (P. A. 602-615) are not very clear because he devised categories of his own to describe the agents rather than following those used in the claim for refund, the notice of hearing, and in the testimony and other evidence (see P. A. 594-600, 605-606).[3] The basic facts are not, however, in dispute.

[2] *Railway Express Agency, Inc.* v. *Higgins*, Civil Action No. 35-688; *Railway Express Agency, Inc.* v. *Higgins*, Civil Action No. 56-171; *Railway Express Agency, Inc.* v. *Johnson*, Civil Action No. 75-321; *Railway Express Agency, Inc.* v. *Johnson*, Civil Action No. 93-26.

[3] Some of the merchant agents also are employed by a railroad as a agent, caretaker, or in some other capacity. Petitioner includes the with the category of merchant agent because their express activities a neither conducted on railroad property nor engaged in during the hou that the person is working for the railroad. Thus, there is no conne

There were 1469 merchant agents in 1937, and 387 of them had some connection with a railroad. Of the entire group, 737 were merchants or storekeepers, 56 were farmers, 53 were housewives, 92 were postmasters or postmistresses, 117 were in the trucking, drayage, bus or taxi business, and 62 operated automobile agencies, service stations or garages. The remainder were engaged in a wide variety of businesses and occupations. (F. 33, P. A. 612-613.) Many of these agents have large investments in their outside businesses and only a small investment in their express business (F. 40, P. A. 614). While no finding was made by the examiner in the 1948 proceeding concerning the amount of commissions received by the merchant agents not paid a fixed amount, they usually are located in small communities providing a limited volume of business (F. 31, P. A. 612). In the 1938 proceeding, the examiner found that, in the month of March 1937, about 50% of the merchant agents earned commissions of less than $5.00 and

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tion between the person's express activities and his railroad job. The examiner apparently recognized this as to some such persons, but nevertheless included those who were also employed as a railroad agent in the category of joint agents (P. A. 595, 605, 672), and those also employed as railroad caretakers or custodians in the category of "caretaker or custodian agents," together with those railroad agents who handled their express activities on railroad property during the hours that they were employed by a railroad (P.A. 596, 605). Similarly, the examiner refused to categorize as merchant agents those persons paid a fixed sum rather than a commission even though they differed from the merchant agents in no other respect, and lumped them together with other agents that admittedly are employees in a category entitled "Fixed Allowance Agents" (P. A. 597-598). Also, the examiner has treated his limited category of merchant agents as part of a broader group which includes agents of all types who are paid on a commission basis, and which he refers to as "Commission Agents" (P. A. 594-597, 605-606). In this petition, we use the term "merchant agents" to include all those with respect to whom a refund is sought, and not in the narrow sense adopted by the examiner. While the Board's findings cited in support of the factual statements made in this petition thus technically may not refer to all the merchant agents, the evidence of record is the same with respect to all of them (other than the immaterial factors used by the examiner to draw his distinctions).

approximately 85% earned commissions of less than $50.00 (P. A. 170). The relationship is terminable at will by either party (F. 36, P. A. 613).

Merchant agents perform various express services such as the receipt and delivery of express shipments, the collection of transportation charges, making out claim papers, receipts and waybills, and keeping necessary records (F. 15, P. A. 607). The express office is located on their own property or at such place as they may obtain (F. 13, P. A. 605-606). The actual work is often performed, in whole or in part, by assistants, and the use, selection, and payment of such assistants is entirely controlled by the merchant agents (F. 41, P. A. 614).[4] The express activities are usually performed during the normal hours of the agent's other business (F. 34, P. A. 613). The merchant agents, however, do not devote their full time to the express business and may absent themselves from the express offices at any time without consulting or obtaining the permission of petitioner (F. 35, P. A. 613). The necessary forms and some of the equipment may be supplied by petitioner, but at least some of the equipment used in handling the express business is furnished by the agent (F. 37, 38, P. A. 613).

The merchant agents and their assistants are not entitled to the rights and privileges that petitioner has granted to its employees, such as seniority (F. 28, P. A. 611-612), paid vacations and free transportation (F. 29, P.A. 612). They are not included among petitioner's employees in the reports made by petitioner to the Interstate Commerce Commission (F. 30, P. A. 612).

Newly-selected merchant agents are instructed by petitioner concerning the nature of the express business to be

[4] "The merchant agent hires, discharges and determines the working conditions and rate of pay of those who may perform for him or her some of the Express Agency's work." (Appendix A, p. 27, *infra*.)

performed by them (F. 39, P.A. 614). Many, but not all, of them partially complete a standard form entitled "Application for Employment" (F. 22, P.A. 610), and they use standard forms supplied by petitioner in transferring accounts (F. 24, P.A. 610) and in accounting to petitioner for the business done by the agency (F. 25, P.A. 610-611). Many, but not all, of the merchant agents are furnished a manual of rules and regulations, but only those rules that relate to the duties of merchant agents are applicable to them (F. 18-19, P.A. 608-609). The rules in general concern such matters as the acceptance, transportation and delivery of shipments, and their protection from disappearances and injury; the regular duties of agency and messenger forces and the business involved in carrying on an agency; and the acquisition, disposal and care of supplies, property, and equipment furnished by petitioner (F. 19, P.A. 609). Petitioner also occasionally distributes to the merchant agents circulars and bulletins relating to the conduct of the express business (F. 20, P.A. 609-610).

It was on the basis of these findings of fact that the examiner and the Board made an ultimate finding that the service of the merchant agents and their assistants "has been rendered subject to the continuing authority of the Express Agency to supervise and direct the manner of its rendition" (F. 42, P.A. 614), and thus concluded that they are "employees" of petitioner within the meaning of that term as defined in the Railroad Retirement and Unemployment Insurance Acts. Petitioner petitioned for review by the Court of Appeals for the Seventh Circuit, pursuant to the jurisdiction granted by 45 U.S.C. 355(f) and 45 U.S.C. 228k. The Court of Appeals affirmed the order of the Board. In addition to the facts found by the Board, the Court of Appeals noted from the record that the merchant agents furnish any business machines, telephones, and motor trucks used by them in operating the express agency; have

control, at their sole expense, of advertising and insurance; determine the hours during which the agency is open for business; and occasionally receive oral instructions from petitioner's route agents during their periodic visits. (See Appendix A, p. 27, *infra.*)

Reasons for Granting the Writ

This case raises an important issue concerning the coverage of the Railroad Retirement and Unemployment Insurance Acts. The Railroad Retirement Board and the Court of Appeals have held that a large number of independent businessmen, called "merchant agents," and their employees, that have contracted with petitioner to operate express agencies in small communities as an adjunct of their regular business or occupation, are "employees" of petitioner within the coverage of the Acts. Although the Board and the Court of Appeals reached the same conclusion, they followed different routes to that conclusion and also differed with the approach to this problem taken by other courts under the same and closely related statutes.

The Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act (formerly called the Carriers Taxing Act of 1937) provide a system of retirement taxes and benefits for railroad employees similar to that provided in the Social Security Act for most other employed or self-employed persons. The Railroad Unemployment Insurance Act similarly provides a federal system of unemployment insurance contributions and benefits for railroad employees. The Railroad Retirement Act, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act all contain substantially identical definitions of "employer" and "employee," and it is clear that their coverage is intended to be identical. *Railroad Board* v. *Duquesne Co.*, 326 U.S. 446, 448.

The Railroad Retirement and Unemployment Insurance Acts, so far as relevant here, define "employee" to mean "any individual in the service of one or more employers for compensation," and provide that an "individual is in the service of an employer . . . if . . . he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service."

1. *Common Law or Specialized Criteria.* The fundamental issue here is whether the Congress by its definition of "employee" in the Railroad Retirement and Unemployment Compensation Acts intended to codify and adopt the full body of the common law criteria, or instead to prescribe a precise statutory formula which was to be the exclusive litmus, by which to separate independent contractors from employees.

(a) This Court has frequently granted certiorari to resolve the issue of whether the Congress intended the common law criteria or some distinct statutory test to be applied in determining the coverage of "employees" under analogous statutes. It has done so with respect to the Federal Employers' Liability Act, *Hull* v. *Phila. & Reading Ry. Co.*, 252 U.S. 475; *Robinson* v. *Balt. & Ohio R. R.*, 237 U.S. 84, the Fair Labor Standards Act, *Walling* v. *Nashville, C. & St. L. R. Co.*, 330 U.S. 158; *Walling* v. *Portland Terminal Co.*, 330 U.S. 148, the National Labor Relations Act, *Labor Board* v. *Atkins & Co.*, 331 U.S. 398; *Labor Board* v. *Hearst Publications*, 322 U.S. 111, and the Social Security Act, *Bartels* v. *Birmingham*, 332 U.S. 126; *Harrison* v. *Greyvan (United States* v. *Silk)*, 331 U.S. 704.[5]

[5] It has accepted the common law criteria for the Federal Employers Liability Act, and rejected them for the other three statutes. But see pp. 16-17, *infra*. The choice is of course governed by the intention of Congress in the particular statute. Moreover, in each of the cases under the latter three statutes the issue was coverage or exemption. As in *Reynolds* v. *Northern Pac. Ry. Co.*, 168 F.2d 934, 938 (C.A. 8), "the question here is not the usual one of whether the workers involved will be left excluded

The Court has yet to consider this issue with respect to the Railroad Retirement and Unemployment Insurance Acts. The issue obviously is as important to the administration of those Acts as it is to the administration of the other statutes as to which this Court has resolved the issue.

(b) The Board rejected the common law criteria as a measure, and went on to state that although the statutory language "does not differ substantially from the common law stated in many of the cases, it is nevertheless in substitation therefor (P. A. 627-628). The Court of Appeals, while adopting a fundamentally different analysis than the Board, stated that "If there is any real difference between the generally accepted common law tests and the statutory definition, the latter must prevail," and therefore focused its "attention on the words 'if * * * he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service'." (Appendix A, pp. 30, 31, *infra.*)

This dismissal of the common law criteria was, we believe, plainly erroneous. The definitions of "employee" trace back through the Railroad Retirement Act of 1935, 49 Stat. 968, the Railroad Retirement Act of 1934, 48 Stat. 1283, and the Railway Labor Act Amendments of 1934, 48 Stat. 1186, to the Railway Labor Act of 1926, 44 Stat. 577, where "employee" was defined to include "every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) * * *"[6] The Railway Labor Act of 1926

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from some general field of social legislation, for they are admittedly within the operation of either the Social Security Act or the Railroad Retirement Act. . . ." With occasional exceptions, the "merchant agents" and their employees if excluded from the railroad acts will be covered by the Social Security Act and state unemployment insurance legislation.

[6] See *Railroad Board v. Duquesne Co.*, 326 U.S. 446, 451, where the Court notes that the corresponding definition of "employer" in the Railroad Retirement and Unemployment Insurance Acts also traces back to the Railway Labor Act.

was concerned with the prevention and settlement of labor disputes between a railroad and its employees, and clearly was not intended to apply to the railroads' relationships with persons traditionally regarded under the usual common law concepts as independent contractors. Thus, in *Nashville, C. & St. L. Ry.* v. *Railway Employees' Dept.*, 93 F.2d 340, 342 (C.A. 6), the court noted that the parenthetical phrase in the Railway Labor Act definition of employee "codifies the common law rule of master and servant." See, also, *Teamsters Union* v. *N.Y., N.H. & H.R. Co.*, 350 U.S. 155, 159-160.

The subsequent statutes, like the Railway Labor Act, were sponsored by the brotherhoods of railroad workers, sometimes in cooperation with the railroads. There is nothing in the legislative history of those statutes indicating that the Congress intended to impose a new and distinct test for distinguishing employees from independent contractors, and it seems clear that such was not intended. The spokesman for the railroad brotherhoods on behalf of the bill subsequently enacted as the Railroad Retirement Act of 1937 stated that "subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service" is "standard language that this committee has approved heretofore in the Railway Labor Act."[7] It was explained in the hearings, committee reports, and debates on the bill enacted as the Railroad Unemployment Insurance Act that its coverage was identical with the coverage of the Railroad Retirement Act, and that separate treatment of unemployment compensation for railroad workers was justified by the precedents of the Retirement Act, the Railway Labor Act, the Federal Employers' Liability Act and similar legislation regulating various aspects of the relationship between the railroads

[7] Hearings on H.R. 6956 before the House Committee on Interstate and Foreign Commerce, 75th Cong., 1st Sess., pp. 19-20.

and their workers.[8] We have already noted that the F. E. L. A., like the Railway Labor Act, has been interpreted to import the established common law principles for determining the existence of an employer-employee relationship.

Furthermore, an attempt in the 79th Congress to expand coverage of the Railroad Retirement and Unemployment Compensation Acts to include independent contractors, and their employees, performing services integrated into the operations of a railroad, did not succeed. Although supported as necessary to prevent "contracting out" from under the coverage of the acts (92 Cong. Rec. 6601, 8261), the bill was changed before passage to retain the existing coverage provisions with two minor exceptions not relevant here.[9] The opponents of extended coverage were of the view that coverage should be limited to persons "who are regularly regarded as railroad workers" (92 Cong. Rec. 7251) as in the existing statutes and in all railway legislation since the Railway Labor Act of 1926.[10] They prevailed in this view.

The action of the Court below, ignoring the common law indicia of an independent contractor status and looking only to the bare words of the statute, not only is contrary to the intent of the Congress, but also conflicts in reasoning and in result with decisions by other courts of appeals. In *Nicholas* v. *Denver & R. G. W. R. Co.*, 195 F. 2d 428, 430

[8] Hearings on H.R. 10127 before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 75th Cong., 3d Sess., at pp. 29-30; H. Rept. No. 2668, 75th Cong., 3d Sess., p. 1; S. Rept. No. 2164, 75th Cong., 3d Sess., p. 1; 83 Cong. Rec. 9068, 9069-9070, 9072, 9075.

[9] A thorough discussion of the legislative history of the amendatory legislation may be found in *Nicholas* v. *Denver & R.G. W.R. Co.*, 195 F.2d 428 (C.A. 10). See, also, *Kelm* v. *Chicago, St. P., M. & O. Ry. Co.*, 206 F.2d 831 (C.A. 8).

[10] See the debates reported at 92 Cong. Rec. 6600-6601, 7216-7217, 7251, 8260, 8262-8263, 9983, 10153, 10319. See, also, 92 Cong. Rec. A 3430, A 4906.

(C.A. 10), the court held that an independent contractor and its employees are not "employees" of a railroad for purposes of the Railroad Retirement Tax Act, and applied "well recognized principles of general law" in holding that an operator of a stockyards for a railroad was an independent contractor. In *Pennsylvania R. Co.* v. *United States*, 108 Ct. Cl. 419, 70 F. Supp. 595, stevedores were held not to be "employees" of the railroad. The contract between the railroad and the stevedoring company provided that the employees of the stevedoring company were to be removed upon demand by the railroad, and were to "conform to the general rules and regulations of the Railroad while on duty," and that the "work of the Contractor shall be under its supervision, subject to the general direction of the Superintendent of the Railroad, or his accredited representatives." 108 Ct. Cl., at p. 423. The services rendered by the stevedores were an integral part of the railroad's service as a common carrier, and had formerly been performed by employees of the railroad. 108 Ct. Cl., at pp. 431, 432. In *Reynolds* v. *Northern Pac. Ry. Co.*, 168 F. 2d 934 (C.A. 8), the Court held that persons engaged in loading coal, cleaning cars, and performing similar services constituting an integral part of a railroad's operations were not "employees" of the railroad even though some of the contracts involved required that the work be performed "in a manner satisfactory to and in compliance with the instructions and rules of the Superintendent of the Railway Company." 168 F. 2d, at p. 940. The same result was reached in *Kelm* v. *Chicago, St. P., M. & O. Ry. Co.*, 206 F. 2d 831 (C.A. 8).

2. *Relationship With the Social Security Act.* The decision below threatens to disrupt the complementary relationship between the Railroad Retirement Act and the Social Security Act. The two statutes were intended to be mutually exclusive, so that a particular relationship

would come within the coverage of only one of the statutes. Thus, an employee of a railroad would be subject to the Railroad Retirement Act while an independent contractor with a railroad, and his employees, would be subject to the Social Security Act. *Reynolds* v. *Northern Pac. R. Co.*, 168 F. 2d 934, 938-939 (C.A. 8); *Martin* v. *Federal Security Agency*, 73 F. Supp. 482 (W.D. Pa.), aff'd, 174 F. 2d 364 (C.A. 3).

The early decisions under the Social Security Act for the most part held that general common law principles were to be applied in determining whether a person was an "employee" for purposes of the Act. See, e.g., *Glenn* v. *Standard Oil Co.*, 148 F. 2d 51 (C.A. 6); *Williams* v. *United States*, 126 F. 2d 129 (C.A. 7); *Texas Co.* v. *Higgins*, 118 F. 2d 636 (C.A. 2). In *United States* v. *Silk*, 331 U.S. 704, and *Bartels* v. *Birmingham*, 332 U.S. 126, this Court reversed administrative attempts to extend the coverage of the Act to certain independent contractors and their employees, but indicted in dicta that a statutory test broader than the usual common law rules was to be applied in distinguishing between employees and independent contractors. When the Social Security Administrator and Treasury Department promulgated regulations abandoning the common law tests, relying on this dicta, the Congress almost immediately amended the Act to provide that "The term 'employee' . . . does not include (1) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor or (2) any individual . . . who is not an employee under such common-law rules." 62 Stat. 438. The amendment was made retroactive to the date of enactment of the Social Security Act, and the legislative history emphasizes that its purpose was to restore the original intent of the Congress that the common law rules be applied.[11]

[11] See *Zipser* v. *Ewing*, 197 F.2d 728 (C.A. 2), and *Party Cab Co.* v. *United States*, 172 F.2d 87 (C.A. 7), where the history of the amendment is discussed.

The Congress, therefore, undoubtedly intends, as it always intended, that the common law criteria be applied in determining whether an employee or independent contractor relationship exists for purposes of the Social Security Act. In view of the complementary relationship of the Social Security Act with the Railroad Retirement Act, it seems obvious that the Congress did not intend some different criteria to be applied in distinguishing employees from independent contractors under the latter statute.[12] The application of different criteria could result in determinations by the separate agencies administering the two acts that neither or both statutes are applicable to particular persons. Indeed, in some instances at least merchant agents have paid social security taxes on the entire salaries of their employees even though such employees expended part of their time in handling the agent's express business (P.A. 234, 273, 308-309, 370), and have now been held in this case to be employees of petitioner thereby obligating petitioner for contributions under the Railroad Retirement Tax Act.

3. *The Common Law Rule.* There cannot be doubt that the merchant agents are at common law independent contractors, not employees. They are small, independent businessmen operating the express agencies for the most part in conjunction with some other business or occupation. The merchant agents have independent control of the location of the agency, its hours of operation, and the selection, duties, compensation, and discharge of any assistants employed. Their profit or loss from the operation of the agency depends in large part upon their own initiative, judgment, and energy, since they are compensated on a

[12] One of the principal objections to the extension of coverage to certain independent contractors as proposed in the 79th Congress, see p. 14, *supra*, was that it would cause conflicts and confusion between the coverage of the Railroad Acts and the Social Security Act. See 92 Cong. Rec. 8262-8265.

commission basis, solicit and advertise for business on their own responsibility and at their own expense, and must bear most of the expense of operating the agencies. They have never been considered by petitioner, and do not consider themselves, to be employees, have not been reported to the Interstate Commerce Commission as employees of petitioner, and have not received the benefits, such as paid vacations and seniority rights, which petitioner grants to its employees.

These are all strong indicia that the merchant agents control the details of the operation of the express agency, and thus are independent contractors at common law. See, e.g., *Standard Oil Co.* v. *Anderson*, 212 U.S. 215; *Casement* v. *Brown*, 148 U.S. 615, 622; *Del Vecchio* v. *Pennsylvania Railroad Company*, 233 F.2d 2 (C.A. 3); *Williams* v. *United States*, 126 F.2d 129, 132 (C.A. 7). The merchant agent is "an independent employer of labor, conscious of his own power to direct and willing to assume the responsibility of direction and to be judged by its results." *Chi., Rock Isld. & Pac. Ry.* v. *Bond*, 240 U.S. 449, 456-457. Nor is this conclusion affected by the facts that the merchant agents (but not their employees) are instructed in the nature of their duties when the relationship is first established; that some of them are given a manual of rules and regulations relating in part to the duties of merchant agents and occasionally supplemented by circulars;[13] that petitioner's route agents visit the merchant agents perhaps two or three times a year to check their accounts and observe whether the

[13] The rules and regulations have so little relevance to the operations of the merchant agencies that petitioner leaves the distribution of the rules and regulations to the merchant agents to the discretion of its division superintendents. While most division superintendents have made the rules and regulations available to the merchant agents, others have not, one testifying that he "felt [a merchant agent] had little need for them." (P.A. 496.)

agency is being operated satisfactorily;[14] that petitioner furnishes the merchant agents with the standard forms used in its paperwork and occasionally with some equipment; and that the relationship is terminable by either party at will.

Certainly, the merchant agents have as much independence and control over the details of their work as the insurance agents in *Zipser* v. *Ewing*, 197 F.2d 728, 731 (C.A. 2), who were furnished "a manual of rules and regulations for [their] guidance in selling and servicing policies," were required to maintain records and fill out certain forms (supplied by the insurance company) in strict conformity with the rules and regulations, and were subject to termination of the relationship at any time on notice; or as the taxi drivers in *Party Cab Co.* v. *United States*, 172 F.2d 87 (C.A. 7), who were required to obey the rules and regulations of the taxicab company subject to the right of the company to terminate the relationship; or as the commission agents in *Glenn* v. *Standard Oil Co.*, 148 F. 2d 51, 53-54 (C.A. 6), who operated bulk gasoline distributing plants on premises furnished by the company, sold gasoline supplied by the company at prices fixed by the company, were furnished by the company with a rule book that "detailed safety measures, provisions for the care of the Company's funds, repair and maintenance of its property, and methods for successful operation of the business, were sent "from time to time, certain circular letters, dealing with the

[14] The Board made no findings of fact concerning supervision by the route agents. There is evidence in the record that the route agents visit the merchant agents perhaps two or three times a year to check their accounts and to see that they are operating their agency satisfactorily (P. 24-25, 38, 137, 235-236, 267-269, 301, 306, 317, 326, 365-366, 494, 517; R.A. 31). Also, the route agents sometimes inform the merchant agents whether or not a particular rule or regulation is applicable to them (P.A. 137, 267-269, 360, 497). *The permission of the merchant agents is required before the route agents can inspect the agency premises and records* (P.A. 278-279, 483-484, 522).

proper operation of the business, were asked to attend sales conferences held on various occasions, and were visited twice a year by a company auditor who inspected their "operations and methods of doing business."

The truckers in *Harrison* v. *Greyvan* (*United States* v. *Silk*), 331 U.S. 703, were given a course of instructions in the company's methods of doing business, directed by company dispatchers concerning where and when to pick up or deliver freight, supplied with insurance by the company, and given a manual of instructions regulating in detail the manner in which the truckers performed their duties (which the company testified it did not attempt to enforce). The company also had some trucks that admittedly were driven by its employees, and the "Operations by the company under the two systems were carried out in the same manner." 331 U.S., at p. 710. Even though this Court, prior to the amendment of the Social Security Act, rejected the common law criteria and looked to the economic realities of the relationship in the light of the broad social purposes of the statute, it held that the truckers were independent contractors and not employees of the company since, just as the merchant agents here, "the truckmen hire their own assistants, own their trucks, pay their own expenses, with minor exceptions, and depend upon their own initiative, judgment and energy for a large part of their success." 331 U.S., at p. 716. The Court pointed out that, as is equally true under the Railroad Acts, "There is no indication that Congress intended to change normal business relationships through which one business organization obtained the services of another to perform a portion of production or distribution." 331 U.S., at p. 714.

4. *The Case Should in Any Event Have Been Remanded for Reconsideration.* Even if the legal standard applied by the court below were correct, it erred in sustaining, as sup-

ported by substantial evidence, the Board's conclusion based upon a different legal theory.

The inordinate length of the 222 pages of the Examiner's Report (P.A. 582-804), adopted by the Board (P.A. 839-840), precludes an inescapably demonstrable basis for its decision. But it is plain enough that its fundamental rationale consists of a minute analysis of each element of the relationship between petitioner and the merchant agents and their employees, considered separately and apart from all the other elements of the relationship. Because each such element, considered alone, also was an element in petitioner's relationship with some other group of its agents "conceded" to be employees of petitioner or in some cases where an employer-employee relationship had been found to exist, the Board concluded that the existence of the particular element failed to indicate that the merchant agents are independent contractors.[15] (P.A. 645-804; see, particularly, P.A. 697-792). Thus, for a single example, the Board refers to the fact that the merchants agents are free to select the location of the agency office, and stated that " . . . since the freedom of action accorded the merchant agent in this respect is no greater than that accorded the exclusive commission agent, an admitted employee, it is clear that this is not a factor which would tend to indicate that the merchant agents are not employees of the Express Agency." (P.A. 703.)

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[15] The Board relied most frequently in this regard on a comparison of the merchant agents with the joint agents, said to have been "conceded" by petitioner to be employees. In so doing, the Board ignored the fact that petitioner's "concession" with regard to the joint agents was made for purposes of this case alone and then only in furtherance of an offer in compromise, and that in no sense did petitioner concede that the joint agents in fact are its employees (P.A. 230). Furthermore, while petitioner's relationship with the merchant agents is in many ways similar to its relationship with the joint agents, there are a number of significant differences, which the Board wrongly ignored by pursuing its independent examination of each separate element of the relationship.

The Court of Appeals rejected the Board's atomization of the relationship between petitioner and the merchant agents, properly holding that "whether merchant agents are employees or independent contractors must be determined on the basis of the entire situation," and that "The quality of the relationship (employee or independent contractor) is to be judged by the presence or absence of no single evidentiary factor." (Appendix A, at p. 31, *infra*.) See *United States* v. *Silk*, 331 U.S. 704, 719. Despite this rejection of the Board's piecemeal approach, the Court of Appeals affirmed on the ground that the Board's procedure was not arbitrary or capricious and that substantial evidence in the record supports the Board's ultimate finding that the merchant agents and their employees are employees of petitioner.[16]

Findings of an administrative agency, when supported by substantial evidence in the record as a whole, are of course conclusive if they have a reasonable basis in law. *Universal Camera Corp.* v. *Labor Board*, 340 U.S. 474; *Unemployment Comm'n* v. *Aragon*, 329 U.S. 143. It is equally well established, however, that the "Administrative determinations must have a basis in law and must be within the granted authority." *Social Security Board* v. *Nierotko*, 327 U.S. 358, 369; *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 677-678. More particularly, they must also be supportable on the basis assigned by the agency, *Securities Comm'n* v. *Chenery Corp.*, 318 U.S. 80, 92-93; *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 353 U.S. 944, 945.

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[16] Among the evidence said to support the Board's determination was the receipt by the merchant agents of "oral instructions from Express Agency's Route agents whose function is to visit the non-exclusive commission agents periodically to see that Express Agency's Rules and Regulations are observed." (Appendix A, p. 26, *infra*.) The Board made no finding to this effect. (See footnote 14, p. 19, *supra*.)

The Court of Appeals rejected the piecemeal approach of the Board and held as a matter of law that the relationship must be considered as a whole. Under the doctrine of the *Chenery* case, this should have resulted in a remand to the Board for reconsideration pursuant to the principles laid down by the Court of Appeals.

Conclusion

For the reasons given above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Before DUFFY, *Chief Judge, and* FINNEGAN and HASTINGS, *Circuit Judges.*

DUFFY, *Chief Judge.* Railway Express Agency seeks a review of jurisdictional order No. 56-235 of the Railroad Retirement Board dated August 29, 1956, holding that 1) certain classes of individuals rendering service for Express Agency come within the definition of "employee" under the Railroad Retirement Act (45 U.S.C. §§228 (a-y)), and the Railroad Unemployment Insurance Act (45 U.S.C. §§351-367) and 2) denying Express Agency's claim for a refund of contributions paid under protest in the sum of $108,816.89 pursuant to Title 45 U.S.C. §358 Railroad Unemployment Insurance Act.

Express Agency did not consider those of its agents defined as "merchant agents" and as "joint agents" and their assistants as employees under the Railroad Retirement Act. By reason thereof, the proceedings now before us were initiated by Board order dated October 28, 1937. The Railroad Unemployment Insurance Act became effective on July 1, 1939. By order dated August 1, 1939, the Board held that individuals who were designated "joint agents" and "merchant agents" were employees under the Railroad Retirement Act.[1] The Board designated the proceedings "Jurisdictional Docket No. 2."

Thereafter, Express Agency paid, under protest, railroad retirement taxes and railroad unemployment insurance contributions with respect to "merchant agents", "joint agents" and their employees. On June 23, 1948, the Board reopened Jurisdictional Docket No. 2 and initiated proceedings which it designated as Jurisdictional Docket No. 2-2A which resulted in Board order 56-235 dated August 29, 1956, which is the basis for this petition for review.

[1] The Board pays benefits and collects contributions under the Railroad Unemployment Insurance Act. These functions are divided under the Railroad Retirement Act; the Board pays benefits under that Act and the Internal Revenue Service administers a companion taxing statute. Only unemployment insurance contributions are involved in this proceeding against the Board.

The rail express operations of Express Agency are conducted by virtue of a standard agreement between Express Agency and each railroad over which express shipments are carried. Arrangements were made in this agreement for railroad agents and other employees to act as express agents on railroad premises. These agents are referred to as "joint agents" or "joint railroad-express agents."

Express Agency also arranged with merchants and others having occupations wholly outside the railroad industry whereby such persons would represent the Express Agency as agents and conduct the express business on premises which they occupied. These agents have been classified as, and are referred to herein as "merchant agents." Joint agents and merchant agents are used principally in smaller communities where the volume of business would not support a full-time agent.

At the opening of the first hearing in Jurisdictional Docket No. 2-2A held August 10-12, 1948, Express Agency stipulated solely for the purpose of these proceedings that "joint railroad express agents" and their employees are employees of the Express Agency under the two Acts. At the time of the hearings, Express Agency had approximately 22,000 agents. Of these more than 16,000 were "joint railroad-express agents."

In the 1938 proceedings, Express Agency identified 1460 individuals as "merchant agents." Of these 734 were merchants or storekeepers, 56 were farmers, 53 were housewives, 92 were postmasters or postmistresses, 117 were in the trucking, drayage or taxi business, 62 operated automobile agencies, service stations and garages. The remainder were engaged in occupations such as clerk, packing concern employee, coal company employee, store employee, hotel employee, teacher, priest, student, insurance salesman, mail carrier, undertaker, painter and blacksmith. These agents were generally paid on a commission basis which was often in a small amount.

There were no formal written agreements between Express Agency and its agents except such as might be included in its Form 100 "Application for Employment" and its Form 95 "Special Instructions to Agents." Form 100

is and was completed by all commission agents, exclusive and non-exclusive, and also by salaried agents and all other regular employees. Prior to November, 1945, this form included an agreement by the signer to "faithfully perform all his duties, including the keeping of true and correct accounts of the business of the Company conducted by him or in his charge, all as required by the rules and regulations of the Company; * * *"

All commission agents, exclusive, joint, and merchant included, used Form 95 "Special Instructions to Agents" for the transfer of accounts from one agent to another, and the same form of monthly balance sheets.

At the time an agreement is made for the representation of Express Agency by a merchant agent, a supervisory employee of the Express Agency instructs the new agent as to the practices to be followed in the conduct of the Express Agency. Non-exclusive commission agents, merchant agents included, are customarily furnished with a copy of Express Agency's "General Rules and Instructions." Two editions of this book were issued, one in 1936 and the other in 1948. It is the 1936 edition which was usually referred to throughout the hearings. The Rules were preceded by the following: "Notice to Employees: The Rules, Instructions and Information contained herein are intended for the guidance and use of the Company's employees only. The business of the Company must be transacted strictly in accordance therewith."

The "Rules" contained 1155 rules and instructions, setting forth in great detail how the many operations of the express business, including those of non-exclusive agents, are to be conducted. The General Rules and Instructions were issued for the guidance of all individuals doing express work whether salaried employees or exclusive or non-exclusive commission agents.

Various circulars and bulletins were sent out by Express Agency's superintendents to non-exclusive commission agents, including merchant agents. Such agents also received oral instructions from Express Agency's Route agents whose function is to visit the non-exclusive commission agents periodically to see that Express Agency's Rules and Regulations are observed.

Express Agency furnishes to agents, including merchant agents, necessary forms and stationery to conduct express business. Other equipment furnished varies from agency to agency, but may include platform scales, counter scales, safe, platform trucks, desks, chairs, stationery cases, chests of drawers, metal stamps and revolver. Where Express Agency furnishes scales and trucks, it maintains and replaces them at its own expense. Except with respect to the handling of express shipments to and from trains and in performing pickup and delivery work, the merchant agents usually perform their express work on their own premises.

The merchant agent furnishes 1) the place where the express business is to be performed; 2) business machines such as typewriters and adding machines; 3) the telephone; 4) the motor truck if pickup and delivery service is furnished, together with gasoline, oil, repairs; 5) advertising of express in the merchant agent's location; 6) all insurance which may be carried including workmen's compensation and public liability and fire insurance. The merchant agent hires, discharges and determines the working conditions and rate of pay of those who may perform for him or her some of the Express Agency's work.

Some merchant agents have substantial investments in their business interests in addition to their express work, but most of such agents have a comparatively small investment in the express service as such. Both Express Agency and the merchant agents may terminate the relationship at any time.

At all merchant agencies, express shipments are received and delivered, and Express Agency's uniform receipts are used; transportation and C.O.D. charges are collected; regular reports to Express Agency are made on Agency forms, and funds are remitted to the Agency regularly. At some merchant agencies financial paper is sold, trains are met when necessary and pickup and delivery of shipments by motor truck are furnished.

No commission agents are carried on the Express Agency's payroll. They receive their compensation by deducting the amount of their commissions from the express charges collected by them. This commission generally

amounts to 10% of the express charge. At times, however, there is an additional charge for services such as pickup and delivery.

Express Agency does not specify or set the working hours of the non-exclusive commission agents, such as merchant agents. Such business is usually performed during the customary business hours of the agent's regular business or occupation. However, shipment of perishable products and animals may have to be handled outside of normal business hours and train schedules may also require service beyond the hours during which merchant agents ordinarily carry on their own business.

Express Agency conducts operations by rail, water, motor vehicle and air. It is a common carrier and is subject to Part I of the Interstate Commerce Act, and, as such, is an "employer" under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Express Agency was organized by certain railroads in the continental United States and began operations March 1, 1929. It is successor to the American Railway Express Company which had conducted express transportation business since July 1, 1918, when it succeeded the Adams Express Company, the American Express Company, the Southern Express Company and Wells Fargo & Company which were the principal express companies operating in the United States at that time.

Railway Agency urges that its merchant agents are not employees but are independent contractors. It points to various tests under common law principles and insists that these tests establish the status of independent contractor for its merchant agents. Among other items are that the merchant agent furnishes the premises where the express business is conducted; he hires and discharges the individuals who work for him in the express business; he furnishes business machines and he is not granted a vacation by the Express Agency. The question of control over details of the work is also stressed.

The examiner made detailed Findings of Fact and Conclusions of Law which were adopted by the Board which then determined that certain agents including merchant

agents and the individuals engaged by them to perform and assist in performing express work "are and have been at all times employees of the Express Agency with respect to their express work, within the meaning of the Railroad Retirement and Railroad Unemployment Insurance Acts, except that no opinion is expressed with respect to the creditability of any pickup and delivery service performed at any express office as a part of a general drayage business conducted by the agent or his assistant."

Section 5(f) of the Railroad Unemployment Insurance Act, which is incorporated by reference in Section 11 of the Railroad Retirement Act states: "* * * The findings of the (Railroad Retirement) Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive. * * *" Therefore, the Retirement Board's decision should not be set aside if supported by substantial evidence, is not arbitrary and has a reasonable basis in law. *Monahan* v. *Railroad Retirement Board*, 7 Cir., 181 F. 2d 751, 753; *Dunne* v. *Railroad Retirement Board*, 7 Cir., 183 F. 2d 366, 367; *Schafer* v. *Railroad Retirement Board*, 7 Cir., 217 F. 2d 874, 875. To sustain the Commission's interpretation and application of the statutory term "employee" we need not find that such construction is the only reasonable one or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings. *Southern Development Company* v. *Railroad Retirement Board*, 8 Cir., 243 F. 2d 351, 353, (citing and quoting from *Unemployment Compensation Commission etc.* v. *Aragan*, 329 U.S. 143, 153). "It is not the court's function to substitute its own inferences of fact for the Board's, when the latter have support in the record." *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111, 130.

There was nothing arbitrary or capricious about the Board's procedure. Three hearings were held. Express Agency was given unlimited opportunity to produce witnesses and to introduce exhibits. Agency's attorneys were permitted to make oral arguments before the examiner at the first hearing, before the Board at the second hear-

ing, and before both the examiner and the Board in the third hearing.

One difficulty in determining by the application of common law principles whether an individual is an employee or an independent contractor is that there is no single, universally accepted formula for the common law tests. In *Williams* v. *United States*, 126 F. 2d 129, 132 this Court pointed out that there is a "considerable contrariety of opinion" as to the elements in the common law test.

If there is any real difference between the generally accepted common law tests and the statutory definition, the latter must prevail. Insofar as this litigation is concerned, the definition of the term "employee" is the same in the Railroad Retirement Act,[2] the Railroad Unemployment Insurance Act,[3] and the Railroad Retirement Tax Act.[4] The Railroad Retirement Act, under Section 1(b) and (c) provides:

> "(b) The term 'employee' means (1) any individual in the service of one or more employers for compensation * * *
>
> "(c) An individual is in the service of an employer * * * if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, * * *"

As the merchant agents do not render professional or technical services, we can eliminate a consideration of the phrase "or he is rendering professional or technical services and is integrated into the staff of the employer." Furthermore, the last clause hereinbefore quoted commencing with the words "* * * or he is rendering, on the

[2] 45 U.S.C. 228a(b)(c).
[3] 45 U.S.C. 351(d)(e).
[4] 26 U.S.C. 3231(b)(d).

property * * *" became effective only with respect to services rendered after December 31, 1946. *Reynolds* v. *Northern Pacific Railway Company*, 8 Cir., 168 F. 2d 934. We, therefore, focus our attention on the words "if * * * he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, * * *"

It must be conceded that the activities of the merchant agents do present some indicia of the independent contractor status. But whether merchant agents are employees or independent contractors must be determined on the basis of the entire situation. "The quality of the relationship (employee or independent contractor) is to be judged by the presence or absence of no single evidentiary factor, but by an over-all view." *Anglim* v. *Empire Star Mines Company, Ltd.*, 9 Cir., 129 F. 2d 914, 917.

The Board found there was stronger evidence of employee status when all the activities of the merchant agents were considered. The general rules and instructions, the circular letters of instruction, the supervising activities of the Route Agents, among others, are all evidentiary items showing the existence of the Express Agency's continuing authority to supervise and direct the manner of rendition of its service.

All non-exclusive commission agents including merchant agents, perform a continuing express service. Their work is an integral part of Express Agency's regular daily nationwide transportation service. While their share of the total business is small, Express Agency could not maintain a comprehensive nationwide express service without them. The nature of Express Agency's business makes essential a supervising control over each agent's work.

We hold that there is substantial evidence to support the Board's findings that merchant agents hereinbefore described are employees of Railway Express Agency, Inc.

The decision of the Railroad Retirement Board is

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

Thursday, January 9, 1958

Before Hon. F. Ryan Duffy, *Chief Judge*, Hon. Philip J. Finnegan, *Circuit Judge*, Hon. John S. Hastings, *Circuit Judge*.

No. 11924

Railway Express Agency, Inc., petitioner,

vs.

Railroad Retirement Board, respondent.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, the Order of Railroad Telegraphers, Railway Labor Executives' Association, intervenors.

Petition for Review of an order of the Railroad Retirement Board

This cause came on to be heard on the petition for review of an order of the Railroad Retirement Board, and the transcript of the record from the Railroad Retirement Board, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that Order No. 56-235 entered by the Railroad Retirement Board on August 29, 1956, in this cause, be, and the same is hereby, Affirmed.